

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 18623 of 2004

Between:

**Smt. P. Lakshmi Devi, W/o. P. Somasunder,
Resident at 27-16/22/39/1,(Plot No. 40), West Sri Krishna Nagar, Safilguda, R K
Puram Post, Secunderabad - 500 056**

..... PETITIONER

AND

**1 Indian Immunologicals Ltd. Road No. 44, Jubilee Hills, Hyderabad 500 033,
rep by its Managing Director**

**2 The Managing Director, Indian Immunologicals Ltd. Road No. 44, Jubilee
Hills, Hyderabad 500 033,**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or Direction, more particularly one in the nature of a Certiorari and/or certiorarified mandamus, calling for the records of the respondents Office Order No. IIL:ADM:2004 dated 8-10-2004 transferring and posting the Petitioner to AHD-Institutions Department at Delhi with immediate effect, and declaring the same as arbitrary, unreasonable and illegal and to quash the same, and consequently to direct the respondents to forbear from giving effect to, or acting upon, the said impugned Officer Order and to permit the petitioner to continue to work at Hyderabad.

Counsel for the Petitioner: MR.KATRAGADDA GOPAL CHOUDARY

Counsel for the Respondents: MR.P.NAGESWAR SREE

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 18623 of 2004

ORDER:

Challenging the office order No. IIL:ADM:2004 dated 8.10.2004 transferring and posting the petitioner to AHD-Institutions Department, Delhi the present writ petition is filed.

The brief facts that are necessary for the disposal of the writ petition may be stated as follows:

The petitioner was appointed in the establishment of 1st respondent-Company as a Stenographer in the year 1983. Her services were confirmed with effect from 18.8.1984. Thereafter she was promoted as Senior Stenographer w.e.f. 1.4.1991. On completion of probation, she was confirmed as Senior Stenographer w.e.f. 1.4.1992. By proceedings dated 21.9.1983 she was designated as Supervisor with effect from 1.9.1993 though the nature of her work remained substantially the same as that of the Stenographer. She was appointed as Junior Officer w.e.f. 1.7.1998 and in that cadre she was also confirmed after completion of probation period. Besides carrying the work of Stenographer, she was also doing tender preparation, maintenance of files, correspondence and records of the company relating to the Marketing Department and also preparation of information, statements and particulars required by the Department. She has put in 20 years of meritorious service. By proceedings dated 24.11.2003 it was informed that her work was not satisfactory and there was deterioration in her performance and willful refusal to show any improvement. Therefore, she was terminated from service. Challenging the same, W.P. 222 of 2004 was filed by her. By orders dated 7.1.2004 in WPMP 311 of 2004 in W.P. 222 of

2004, interim suspension as prayed for was ordered. The 1st respondent did not give effect to the interim suspension but filed WVMP to vacate the interim order. That vacate petition was dismissed. Thereafter she was permitted to join duty on 2.2.2004 but she was not allowed to return to her regular duties which she was normally performing prior to 24.11.2003. Instead, on 2.2.2004 she was directed to sit separately and in isolation at a table specially placed for her in the cellar of the office premises. She was not assigned any work and was not allowed to go to any other part of the office. No other person was sitting in the cellar room. She was forced to spend the whole day alone without anything to do and was not allowed to speak to anyone. Restrictions were also imposed on the other staff not to speak to the petitioner. She was not paid the salary for the month of November, 2003. Due to the deliberate action putting her under severe psychological pressure and financial hardship, she submitted representations dated 27.2.2004 to the 1st respondent. By letter dated 6.3.2004 from the Executive Director she was informed that the grievances expressed by her are ill-conceived and without any basis and therefore they are rejected. According to the petitioner, her grievance was not reasonably redressed and she continued to remain on duty without any work restricting to the cellar of the office till 3.6.2004. She was asked to do the Head-Marketing by an office order dated 3.6.2004. By a letter dated 16.8.2004 issued by the 2nd respondent, she was informed that her termination dated 24.11.2003 was withdrawn with immediate effect on legal advise. Thereafter, the impugned proceedings dated 8.10.2004 were issued transferring her to the AHD-Institutions Department at Delhi. Challenging the same, the present writ petition is filed on the following grounds:

“ It is submitted that the actions of the respondents in issuing an arbitrary and stigmatic termination order on 24.11.2003 without notice and without any inquiry or any procedure known to law, and refusing to forthwith comply with the interim suspension dated 7.1.2004 granted by this Hon’ble court, and forcing the petitioner to sit in isolation continuously in the cellar room of the office without any work after the

order of this Hon'ble Court dated 30.1.2004, and deliberately withholding and delaying the petitioner's salary dues, and subjecting the petitioner to severe psychological and financial stress and distress, and unreasonably and arbitrarily rejecting the petitioner's representation dated 27.2.2004 and continuing to keep the petitioner in isolation without any work till 3.6.2004 with a view to humiliate the petitioner and to break the petitioner psychologically and emotionally, and asking the petitioner to report to AHD-Trade department on 3.6.2004, and shortly thereafter withdrawing the termination order dated 24.11.2003 by letter dated 16.8.2004 reserving the right of the management to proceed with appropriate disciplinary action against the petitioner, and soon thereafter asking the petitioner to report to AHD-Institutions department by office order dated 2.9.2004, and again shortly thereafter punishing the petitioner by issuing the impugned office order dated 8.10.2004 transferring and posting the petitioner to AHD-Institutions department at Delhi with immediate effect, are all a continuous chain of events calculated and designed only to harass and punish the petitioner in pursuance of vindictiveness, victimization and malice in fact and law".

The respondents filed counter affidavit stating that the petitioner at present is working as Executive-Marketing in the 1st respondent Company. The Government of India commenced a project "Disease Free Zone". For the same the Government of India required supply of foot and mouth disease vaccines. The respondent Company responded to the same and in turn the Government of India placed major order on the respondent Company for the supply of F & MD vaccine. Though the order was placed in 2003, the Government of India was slow in placing the order for the actual supply and it went on increasing and now it reached the peak. To cope up with the said increase in the workload till the completion of the said order which is likely to extent for another year, the Regional Incharge North, Delhi vide letter dated 1.9.2004 requested the Manager-Marketing to take appropriate action to appoint a suitable

person at Delhi giving the job responsibility. The Marketing Manager after considering the said request, considered that instead of recruiting a new person and incurring additional employee cost the petitioner who had the necessary job experience to handle the work at Delhi can be transferred and recommended accordingly. The Management has considered the said recommendation and was of the view that the workload may not long last requiring recruitment of an additional employee and it is in the interest of the Organisation to transfer an employee with the required experience to meet the said workload in the respondent Company and accordingly transferred the petitioner vide office letter dated 8.10.2004 to AHD Institutions, Delhi. But, instead of reporting to duty at Delhi, the petitioner approached this court. The petitioner is transferred due to the request made by the Regional Incharge North, Delhi vide letter dated 1.9.2004 and the transfer order dated 8.10.2004 was issued on administrative grounds due to administrative exigencies and in the larger interest of the respondent-organisation. As the petitioner declined to comply with the transfer order, the respondents had to make an ad hoc arrangement of deputing Mr. B.N. Prasad, Executive Marketing to Delhi. The allegations that she was not assigned any regular duties and was made to sit isolated at a table without assigning any work and that she was not permitted to go to any part of the office are totally incorrect. The petitioner made representation dated 27.2.2004 raising her contentions. The allegation of victimization, vindictiveness, mala fides, improper purpose, abuse of power and arbitrariness has to be established by substantial amount of evidence and mere allegations in a routine manner cannot be a ground to question the transfer order. Hence the respondents pray to dismiss the writ petition.

The petitioner filed a reply affidavit stating that no particulars of the job description to be done by the petitioner at Delhi are mentioned. The petitioner has never done any such work. The averments and contentions of the respondents are only to create an illusion of the transfer having been ordered on administrative

exigencies in order to mask and conceal the real unlawful motives. Mr.B.N. Prasad returned from Delhi within four days and he has been working at Hyderabad from 16.11.2004. Therefore, the requirement of a person at Delhi on administrative grounds is entirely illusory and false. It is only connected to justify the mala fide transfer of the petitioner. The chain of events and circumstances in the affidavit would go to show the hostile, punitive and mala fide nature of the order of transfer. Hence, she prays to allow the writ petition.

At the request of learned counsel for both sides, the main writ petition is taken up for disposal.

Learned counsel for the petitioner contended that because she filed a writ petition challenging the termination order, the respondents passed the impugned order. The chain of events as narrated in the writ petition would clearly indicate that the writ petitioner was victimized and with a mala fide intention the impugned proceedings have been issued and that for the last 25 years no employee is transferred from Hyderabad to any other place. Therefore, the petitioner legitimately expected that she would not be transferred to any other place. Hence, he prays to quash the proceedings.

On the other hand, learned standing counsel for the respondents contended that there is absolutely no factual foundation with regard to the mala fides on the part of the respondents. As the petitioner was having relevant experience, she was transferred to Delhi due to administrative exigencies and the order under challenge does not suffer from any legal infirmities so as to call for interference of this Court.

Though it is specially stated that the 1st respondent-company is wholly owned by the National Dairy Development Board, which is an instrument of the State, the same is refuted in the counter stating that the 1st respondent is not a State within the meaning of

Article 12 of the Constitution. But, the learned counsel for the parties die not advance any arguments on this aspect. Therefore, the point *at issue* is whether the transfer order suffers from any mala fides or whether it is effected due to administrative exigencies as contended by the respondents.

There cannot be any dispute that the transfer is not only an incidence of service but also one of the service conditions of the employee. The competency and jurisdiction of the person who effected the transfer is not under challenge. So also, it is not the case of the writ petitioner that the post which she is holding is not a transferable post. In support of his contention, the learned counsel for the petitioner relied upon a decision in **Smt.K.Prabhavathi v. The Deputy Divisional Manager, Syndicate Bank** wherein it is held:

“Since these lady employees have been working from inception of their service in the twin cities of Hyderabad-Secunderabad and Visakhapatnam and they were exempted from redeployment transfer under the 1991 Central policy, it was legitimate for them to expect that they would be continued to serve in the twin cities and on that basis to arrange affairs of their life and future”.

The above decision has no application to the facts of this case since in the above case there was central policy of the year 1991. In this case there is no such policy exempting their own employees from transferring to any other place from the twin cities of Hyderabad-Secunderabad.

For the proposition that transfer cannot be made by way of or in lieu of punishment, learned counsel for the petitioner relied upon a decision of this court in **P. Anjaneyulu v. Chief Manager, A.P. Circle, BSNL, Government of India, Hyd.** wherein the Division Bench held:

“Although a Court or a Tribunal does not normally interfere with an order of transfer, it

is also well settled that no order of transfer can be passed by way of or in lieu of punishment. Such an order of transfer would be vitiated in law, inasmuch as prior thereto, neither any departmental proceeding has been initiated nor the petitioner had been granted an opportunity of being heard”.

For the same proposition, the learned counsel for the petitioner relied upon another decision of this court in **A. Venugopal Rao v. Executive Engineer, Panchayat Raj, Machilipatnam** wherein it is held:

“It is well settled principle of law that an order of transfer on administrative ground is permissible but an order of transfer by way of or in lieu of punishment is not”.

There is no dispute about the proposition of law laid down by this Court. The learned counsel for the petitioner further relied upon a decision in **State of U.P. v. Jagdeo Singh** wherein it is held:

“We must make it clear that any and every transfer of a police officer from one police station to another will not amount to punishment, even if it involves the loss of a special emolument. If a Police officer is transferred from one charge to another in the ordinary course of administrative exigencies, the provisions of Section 7 of the Police Act will not be attracted because a transfer simpliciter is not punishment. It is only when the transfer is made by way of punishment, as in the instant case, that Section 7 would come into play”.

The learned counsel for the petitioner relied upon yet another decision in **K. Amarnath Reddy v. Government of A.P.** wherein it is held:

“It is well settled that the validity of the transfer order could be assailed only on three grounds, but not on any other grounds, and those grounds are:

- i. want of authority in the transferring authority;
- ii. the transfer order is vitiated on account of established mala fides.
- iii. Infraction of any mandatory statutory provisions”.

Relying upon the above decisions, learned counsel for the petitioner contended that it is a case of mala fide transfer. Whether it is a case of mala fide transfer or not will be discussed little later.

With regard to malice, learned counsel for the petitioner relied upon a decision of the apex court in **State of A.P. v. Goverdhanlal Pitti** wherein it is held:

“The legal meaning of malice is “ill-will or spite towards a party and any indirect or improper motive in taking an action”. This is some times described as ‘malice in fact’. “Legal malice” or “malice in law” means “something done without lawful excuse”. In other words, “it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others”.

Learned counsel for the petitioner also relied upon a decision in **S.R. Venkataraman v. Union of India** wherein it is held:

“Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable

or probable cause”.

On this aspect, learned counsel for the petitioner contended that because the respondents passed a stigmatic termination order dated 24.11.2003, she filed a writ petition and obtained interim suspension and thereafter she was forced to sit in isolation in the cellar room of the office without any work and she was subjected to severe psychological and financial distress and in spite of giving representation the same has not been considered objectively and thereafter the termination order dated 24.11.2003 was withdrawn and shortly thereafter by way of punishment the petitioner has been transferred to Delhi.

The allegations of not entrusting the work and confining the petitioner to cellar room and not allowing her to move from cellar room and not allowing her to speak to anyone are denied by the respondents in the counter affidavit. The show-cause notice dated 24.11.2003 was issued by the Executive Director terminating her services by giving three months or three months pay in lieu of notice. It was stated in the said notice that in view of her continuous indifference in attending to the duties and willful refusal to show any improvement in gross careless and negligent manner they lost confidence in her services. The petitioner challenged the same and obtained interim suspension. Though the respondents filed a vacate petition, that was dismissed. Thereafter she was allowed to join duty on 2.2.2004. She made a representation with several allegations. As the allegations in the representation are found ill-conceived and without any basis, the representation was rejected by the Executive Director. No mala fides are attributed against the Executive Director. Now the present impugned transfer order has been passed by the Managing Director of the 1st respondent. It is not the case of the petitioner that at the behest of the Executive Director the Managing Director passed the impugned order. So also, no mala fides are attributed against the Managing Director who effected the transfer. The reason given by the respondents for transferring the petitioner to

Delhi is the letter addressed to the Marketing Manager by the Regional Incharge North, Delhi, to take appropriate action to appoint suitable person at Delhi giving job responsibility. Therefore, the Marketing Manger of the 1st respondent recommended the transfer of the petitioner who had necessary job experience to handle the work at Delhi. So, the Management has considered the recommendation of the Marketing Manager and passed the impugned proceedings. It is not the case of the petitioner that at the behest of the Managing Director or the Executive Director the Marketing Manager recommended the transfer of the petitioner with a mala fide intention. So also, no mala fides are attributed against the Marketing Manager who recommended the transfer of the petitioner from Hyderabad to Delhi. The allegations that the transfer order is vitiated by victimization, vindictiveness, mala fides, improper purpose, arbitrariness, calculated and only designed to harass and punish the petitioner are not based upon any factual foundation. In the absence of any specific allegations against the transferring authority or any one of the officers of the 1st respondent Company, it cannot be said that the impugned proceedings have been issued by way of punishment. It is not a case where jurisdiction of the authority is under challenge or infraction of any mandatory and statutory provisions. Unless the petitioner establishes that the transfer order is vitiated on account of established mala fides, the same cannot be reviewed exercising the power under Article 226 of the Constitution.

Therefore, in the absence of any established mala fides or factual foundation with regard to the mala fides, the transfer order, when made on administrative exigencies, cannot be interfered. As the petitioner was found suitable for the post, who has necessary job experience to handle the work, the Marketing Manager recommended her transfer to the Management and keeping in view the recommendation made by the Marketing Manager and in the interest of the respondent-Organisation the impugned proceedings have been issued and thereafter she was relieved from duty w.e.f. 8.10.2004.

The order under challenge does not suffer from any legal infirmities so as to call for interference of this Court. The writ petition is devoid of merit and it is accordingly dismissed. In the circumstances, no costs.

K.C. Bhanu, J.

Date: 31--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, Indian Immunologicals Ltd. Road No. 44, Jubilee Hills, Hyderabad, 500 033,
2. 2CD copies